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7 | Proposed Counsel For Official Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re:

Chapter 11

THE LITIGATION PRACTICE GROUP,
P.C.

Case No. 8:23-bk-10571-SC

Debtor.

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' OMNIBUS
RESPONSE AND RESERVATION OF
RIGHTS REGARDING FINAL
HEARING ON POSTPETITION
FINANCING MOTIONS**

Hearing Date and Time

Date: August 10, 2023

Time: 10:00 a.m.

Place: *Via ZoomGov*

Courtroom 5C

411 West Fourth Street
Santa Ana, California 92701

1 The Official Committee of Unsecured Creditors (the “Committee”) of The Litigation
2 Practice Group, P.C. (the “Debtor”), in the above-referenced bankruptcy case (the “Bankruptcy
3 Case”) pending under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”),¹
4 hereby submits this reservation of rights regarding the requests [Docket Nos. 119, 156, 249] (the
5 “Financing Motions”) by the chapter 11 trustee, Richard A. Marshack (the “Trustee”), for approval
6 of postpetition financing from Resolution Ventures (“Resolution”), Liberty Acquisitions Group,
7 Inc. (“Liberty”), PanAmerican Consulting, Inc. (“PanAmerican” and, together with Resolution and
8 Liberty, the “Lenders”) on a final basis following interim approval [Docket Nos. 131, 168, 310]
9 (the “Interim Financing Orders”), pursuant to those certain super-priority promissory notes [Docket
10 Nos. 170, 310]. In support of this joinder and reservation of rights, the Committee refers to the
11 record in this Bankruptcy Case, the argument of counsel at any hearing on the Motion, and
12 respectfully states as follows:

I.

RESERVATION OF RIGHTS

15 The Committee does not object to the Court granting the Lenders superpriority claims,
16 pursuant to § 364(c), on account of the loans made to the estate, pursuant to the Notes. The
17 Committee observes that certain provisions of the Notes permitted certain Lenders to either receive
18 sale proceeds in immediate satisfaction of their superpriority claims or to utilize the superpriority
19 claims as a purchase price offset. The Committee argued [Docket No. 282] that the provisions
20 permitting immediate payment of superpriority claims from sale proceeds were improper and
21 elevated an unsecured administrative claim to effectively secured status. In addition to these
22 arguments, as set forth below, the conditions that would permit these payments or offsets have not
23 materialized. The Committee understands that the Trustee will not seek immediate payment of the
24 Lenders' superpriority claims from the sale proceeds, or outside of a plan, and files this reservation
25 of rights to preserve the Committee's arguments with respect to the timing of payment of the
26 superpriority claims.

²⁷ Unless otherwise defined herein, all references to “Section” or “§” refer to a section of the
²⁸ Bankruptcy Code and all references to “Rule” refer to a rule of the Federal Rules of Bankruptcy
Procedure.

1 The Interim Financing Orders authorized the Trustee to enter into the Notes and grant the
2 Lenders superiority administrative claims, under § 364(c), on account of the funds distributed,
3 pursuant to the Notes. However, the Liberty Note [Docket No. 170] provided that Liberty's
4 superpriority claim must be paid

5 one (1) business day following the receipt and sufficiency of the
6 Deposit . . . due to Trustee, as Seller, pursuant to that certain
7 *Agreement of Purchase and Sale and Joint Escrow Instructions* (the
8 'Asset Purchase Agreement'), by and among Trustee and Lender[.]
9 Repayment of this Note will be made from the Deposit pursuant to
the terms of this Note without objection, offset, or recourse and it is
independent from any other agreement or the Asset Purchase
Agreement.

10 Docket No. 170 (Marshack Decl., Ex. B (Liberty Note at 1)). Additionally, the PanAmerican
11 Interim Financing Order provided that "to the extent that lender PanAmerican Consulting Inc.
12 executes an Asset Purchase Agreement and qualifies as an overbidder at the Sale Hearing . . . the
13 Deposit set forth in said qualified application may be reduced by the amount of \$249,663.98
14 without penalty to the overbid process." Docket No. 310 (Liberty Interim Financing Order at 2-3).
15 Liberty's affiliate, Consumer Legal Group, P.C., was not a successful bidder at the auction and its
16 asset purchase agreement was not accepted by the Trustee. Moreover, PanAmerican was not a
17 bidder at the auction—an unrelated third party, the Bensamochan Law Firm was selected back-up
18 bidder—and the accepted back-up bid offered to waive the PanAmerican superpriority claim. The
19 Resolution Notes contain no provisions requiring repayment from the sale proceeds. Accordingly,
20 none of the Lenders are entitled to immediate payment of their superpriority claims from sale
21 proceeds under the terms of the Notes.

22 II.

23 CONCLUSION

24 Based on the foregoing, the Committee respectfully requests that the Court enter an order:
25 (i) granting the Financing Motions on a final basis with respect to the request that the Lenders'
26 receive superpriority administrative claims, under § 364(c); (ii) denying the Motion to the extent
27 the Trustee requests immediate payment of the Lenders' superpriority claims from sales proceeds;

1 and (iii) granting the Committee such other and further relief as is just and appropriate under the
2 circumstances.

3 Dated: July 27, 2023

Respectfully submitted,

4 **FOX ROTHSCHILD LLP**

5 *By: Nicholas A. Koffroth*

6 Proposed Counsel to Official Committee
7 of Unsecured Creditors

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 900, Los Angeles, CA 90067.

A true and correct copy of the foregoing documents entitled: OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OMNIBUS RESPONSE AND RESERVATION OF RIGHTS REGARDING FINAL HEARING ON POSTPETITION FINANCING MOTIONS on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 7/27/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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- 14 • **Johnny White** JWhite@wrslawyers.com, jlee@wrslawyers.com;eweiman@wrslawyers.com

15 2. **SERVED BY UNITED STATES MAIL:** On July 27, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

16 Parties not on ECF but require service of filings:

17 Grobstein Teeple LLP
18 23832 Rockfield Blvd suite 245
19 Lake Forest, CA 92630

20 Jason Patterson Stopnitzky
21 52 Cupertino Circle
22 Aliso Viejo, CA 92656

23 3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on July 19, 2023, I served the following persons and/or entities by personal delivery, mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

24 The Honorable Scott C. Clarkson
25 United States Bankruptcy Court, Central District of California
26 411 West Fourth Street, Suite 5130 / Courtroom 5C
27 Santa Ana, CA 92701-4593

28 I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct

29 7/27/2023

30 Kimberly Hoang

31 Date

32 Printed Name

33 /s/ Kimberly Hoang

34 Signature